

United States District Court

for the
Western District of New York



United States of America

v.

JOSHUA ZAK

Defendant

Case No. ~~MJ~~ 23-mj-5063

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief. On or about the dates listed, in the Western District of New York and elsewhere, the defendant, **JOSHUA ZAK**:

On or about March 6, 2023, did knowingly possess material, that is, a 256 gigabyte (GB) Micro SDXC card, bearing serial number JFST180504-32, that contained images of child pornography, as defined in Title 18, United States Code, Section 2256(8), that had been shipped and transported using any means and facility of interstate and foreign commerce; that had been shipped and transported in and affecting interstate and foreign commerce by any means, including by computer; and that had been produced using materials that had been shipped and transported in and affecting interstate and foreign commerce by any means, including by computer.

All in violation of Title 18, United States Code, Sections 2252A(a)(5)(B) and 2252A(b)(2).

This Criminal Complaint is based on these facts:

☒ Continued on the attached sheet.

Complainant's signature

RANDALL E. GARVER
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Printed name and title

Sworn to before me telephonically.

Date: April 12, 2023

Judge's signature

City and State: Buffalo, New York

HONORABLE MICHAEL J. ROEMER
UNITED STATES MAGISTRATE JUDGE

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I. INTRODUCTION

I, RANDALL E. GARVER, after being duly sworn, depose and state as follows:

1. I am a Special Agent of the Federal Bureau of Investigation and entered on duty in May 2006. I am currently assigned to the Buffalo Field Office and work on cases associated with the Violent Crimes Against Children program, which targets individuals involved in the online sexual exploitation of children. As part of these duties, I have become involved in the investigation of suspected violations of Title 18, United States Code, Sections 2251, 2252, 2252A, 2422, 2423, and 2261. I have also participated in various FBI mandated and volunteer training for the investigation and enforcement of federal child sexual abuse material (CSAM), Sexual Enticement, Travel to Engage in Illicit Sexual Conduct, and Cyberstalking laws in which computers or smartphones/devices are used for engaging in such violations of Federal law.

2. This affidavit is made in support of a criminal complaint charging **JOSHUA ZAK** with a violation of Title 18, United States Code, Section 2252A(a)(5)(B) [Possession of Child Sexual Abuse Material].

3. The statements contained in this affidavit are based upon my investigation, information provided by other law enforcement officers, the review of documents and records related to this case, and on my experience and training. Unless specifically indicated otherwise, all conversations and statements described in this affidavit are related in sum and substance and in part only. Because this affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included every fact known to me concerning this

investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that **ZAK** violated Title 18, United States Code, Section 2252A(a)(5)(B) [Possession of Child Sexual Abuse Material].

II. PROBABLE CAUSE

4. In summer 2015, I began an investigation into **ZAK** after receiving information that indicated he may be in possession of child pornography, sometimes referred to as sexual abuse material (CSAM). In September 2015, the writer obtained and executed a search warrant at **ZAK**'s residence in Buffalo. During the search, **ZAK** told investigators that child pornography would be discovered on some of his computers and digital storage media. In May 2018, **ZAK** plead guilty to one count of violating Title 18, United States Code, Section 2252A(a)(2)(A) [Receipt of Child Pornography] before U.S. District Court Judge Lawrence J. Vilardo. In April 2019, Judge Vilardo sentenced **ZAK** to 72 months of imprisonment, followed by a term of supervised release of 20 years. **ZAK** began his term of supervised release on or about May 13, 2022.

5. One of the special conditions of **ZAK**'s supervised release is that he "shall submit to a search of his person, property, vehicle, place of residence or any other property under his control, based upon reasonable suspicion, and permit confiscation of any evidence or contraband discovered." Another special condition is that **ZAK** "shall not use or possess any computer, data storage device, or any internet capable device unless the defendant participates in the Computer and Internet Monitoring Program (CIMP), or unless authorized by the Court or the U.S. Probation Office."

6. On or about March 2, 2023, U.S. Probation Officer Christopher Calero met with **ZAK** during a home visit. When Officer Calero asked **ZAK** if there would be any

surprises that Officer Calero would be unaware of, **ZAK** told Officer Calero that when he was first released from prison, he was using a smart phone he obtained at his mother's residence to view pornography, and that it started to "go down a slippery slope." **ZAK** further told Officer Calero that he found an old secure digital (SD) card that had pornography and child pornography that was not discovered by law enforcement when he was first arrested years before. **ZAK** also told Officer Calero that he discarded both the phone and the SD card when he found them. When asked by Officer Calero, **ZAK** denied viewing what was on the SD card and any child pornography since his release.

7. On or about March 6, 2023, Officer Calero met **ZAK** at his mother's residence. **ZAK** then retrieved a trash bag from inside the residence. Upon opening the trash bag, **ZAK** revealed another bag containing four electronic items: (1) a Motorola Moto G Stylus 5G smart phone, bearing IMEI number 358179681747408; (2) a Samsung Model SM-T560TU tablet, bearing serial number R52J204GV2D; (3) a 128 gigabyte (GB) SanDisk Ultra micro-SD card, bearing serial number 1457AXD092H2; and (4) a 256 GB Micro SDXC card, bearing serial number JFST180504-32. When Officer Calero asked what would be on the SD cards, **ZAK** stated "a bunch of stuff," including child pornography. **ZAK** turned over the electronic items to Officer Calero.

8. Inscribed on the 256 GB Micro SDXC card is, "Made in Taiwan." Based on my training and experience, there is probable cause to believe this device was manufactured outside of New York state.

9. On or about March 9, 2023, my colleague Task Force Officer (TFO) Eric M. Schmidt conducted a search of the 256 GB Micro SDXC card. I viewed the findings and discovered several files that constitute child pornography. The table below summarizes three

videos discovered on the 256 GB Micro SDXC card; I note for the Court the date column refers to the created and modified dates, likely indicating when the specific file was placed upon the Micro SDXC card:

File Name	Date	Description
screen-20221115-184455	11/15/2022	A video, 4:24 in duration, depicting a prepubescent girl, in my opinion approximately 11 years old, having sexual contact with an adult male. The video is a compilation that shows various sex acts; the adult male performed oral sex on the approximately 11-year-old girl, the same girl masturbated the adult, and then the adult had vaginal intercourse with the girl.
screen-20221115-185623	11/15/2022	A video, 4:09 in duration, depicting a prepubescent girl, in my opinion approximately 7 years old, laying on her back nude from the waist down with her legs spread exposing her vagina. The camera then zoomed in on an adult's hand spreading the girl's labia apart. Next an adult hand placed lubricant on the vulva and then had vaginal intercourse with the approximate 7-year-old girl.
screen-20221115-175647	11/15/2022	A video, 3:32 in duration, depicting a prepubescent girl, in my opinion approximately 7 years old, removing her dress and underwear, exposing her vagina. The girl spread her vulva with her own hands and then masturbated.

III. CONCLUSION

10. Based upon the above information, I assert that probable cause exists to believe that **JOSHUA ZAK** violated Title 18, United States Code, Section 2252A(a)(5)(B) [Possession of Child Sexual Abuse Material]. I therefore request that the Court issue the requested criminal complaint.



RANDALL E. GARVER
Special Agent
Federal Bureau of Investigation

Sworn to and subscribed telephonically

this 12th day of April 2023



HON. MICHAEL J. ROEMER
United States Magistrate Judge